

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

HOWELL DEAN O'BRYAN, JR.,  Movant,  vs.  J.W. COX, IN HIS CAPACITY AS WARDEN OF YANKTON FEDERAL PRISON CAMP;  Respondent.	4:21-CV-04052-LLP  ORDER ON MOTIONS
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Pending are various motions filed by movant Howell Dean O'Bryan, Jr. First, Mr. O'Bryan requests his immediate release during the pendency of this case. See Docket No. 4. The court has no authority to release Mr. O'Bryan and therefore the motion is denied.

Second, Mr. O'Bryan requests the court appoint counsel to represent him in this case. See Docket No. 5. There is no recognized constitutional right under the Sixth Amendment for the appointment of counsel in habeas corpus cases. Hoggard v. Purkett, 29 F.3d 469, 471 (8th Cir. 1994). Habeas actions are civil in nature, so the Sixth Amendment right to counsel applicable in criminal proceedings does not apply. Id. The court does, however, have discretion to appoint counsel if the interests of justice so require or if an evidentiary hearing will be held. See 18 U.S.C. § 3006A(a)(2)(B). The court will

not appoint counsel at this juncture of the proceedings and accordingly denies movant's motion. This case is not legally or factually complex and the court is confident movant can present his issues himself at this point. Should an evidentiary hearing become necessary, the court will appoint counsel.

Lastly, Mr. O'Bryan seeks to proceed in forma pauperis. See Docket No. 6. Although Mr. O'Bryan will be granted in forma pauperis status, he has sufficient funds in his prisoner trust account report to pay the \$5.00 filing fee.

Accordingly, IT IS HEREBY ORDERED:

1. The motion for immediate release (Docket No. 4) is DENIED;
2. The motion for appointment of counsel (Docket No. 5) is DENIED;
3. The motion to proceed in forma pauperis (Docket No. 6) is GRANTED. Mr. O'Bryan shall pay the \$5.00 filing fee to the clerk of court by May 6, 2021.

DATED this 6th day of April, 2021.

BY THE COURT:

  
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VERONICA L. DUFFY  
United States Magistrate Judge